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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
JOHNSON, VICKY A	
ART UNIT	PAPER NUMBER
3682	

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/692,083

Applicant(s)

MOMBRINIE, BRUNO

Examiner

Vicky A. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-80 is/are pending in the application.
- 4a) Of the above claim(s) 59,60,67-78 and 80 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 62 and 65 is/are allowed.
- 6) ☒ Claim(s) 55-58,62-64 and 66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 55-58 and 62-79, drawn to the product, classified in class 74, subclass 594.1.
 - II. Claims 59-61, drawn to the method of assembly, classified in class 29, subclass 888.08.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product made and process of making. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the method of assembly as claimed could be practiced with another materially different product such as not a bicycle crank set.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. This application contains claims directed to the following patentably distinct species of the claimed invention: Figures 2, 11, 12 and 13.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Newly submitted claims 60-61 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Inventions I and II are related as product made and process of making.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 59, 61, 62 and 68-79 are withdrawn from

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consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

6. A preliminary amendment was filed on November 1, 2001. The preliminary amendment indicates that claims 1-54 are to be canceled and that new claims 55-62 are substituted therefore. However, the amendment filed November 1st 2001 was filed with claims numbered as 55-58 and 60-62. Accordingly, claims 60-62 are being renumbered in accordance with 37 CFR 1.126 as claims 59-61, respectively. As such, newly submitted claims 59 and 63-79 have been renumbered 80 and 62-78 respectively.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 55-57 and 62-64, 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborne in view of Smith et al.

Re claims 55 and 62, Osborne discloses crank set comprising: a first member (I') a second member (H') a spider (K) connected to the second member (see Fig 1), a coupling comprising an inner and outer sleeve (h', i'), wherein the outer sleeve extends on the exterior of the first and second members (see Fig 1) and the inner sleeve extends parallel to the outer sleeve on the interior surface of the each of the members (see Fig 1) and include a crank arm (I,H) and a portion of a crank axle (I',H') with the

crank arm (see Fig 1) and the portion of the crank axle being a continuous, monolithic thin wall tubular structure (see Fig 1).

Osburne does not disclose the first and second members being tubular.

Smith et al discloses a tubular crank arm (see Fig 1A).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the crank arms of Osburne to be tubular as taught by Smith et al in order to improve reliability and strength (col. 2 lines 63-65).

Re claim 56, Osburne shows the portion of the crank axle is one half-axle length of the crank set (see Fig 1).

Re claim 57, Smith et al shows a tapered crank arm having an elliptical cross section (see Figs 2B, 3B, 3C).

Re claim 63, Osburne shows the inner sleeve is within the first and second members and includes a tapered surface (see Fig 1).

Re claim 64, Osburne shows a threaded stud (see Fig 1).

Claim Rejections - 35 USC § 103

9. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osburne in view of Smith et al as applied to claims 55-57 above, and further in view of Philpot et al.

Osburne discloses a crank set as described above, but does not disclose the tubular members made of an aramid fiber composite material.

Philpot et al disclose a method of making tubular members for bicycles (col. 1 lines 11-19) using an aramid fiber composite material (col. 4 lines 12-19).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the crank set of Osburne to be made using aramid fibers as taught by Philpot et al in order to increase the strength to weight ratio (col. 2 lines 54-64).

Allowable Subject Matter

10. Claim 62 (newly renumbered) is allowed.
11. Claim 65 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (703) 305-3013. The examiner can normally be reached on Monday-Thursday (7:00a-5:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (703) 308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

vaj *VHJ 12/2/02*
December 2, 2002


Thomas R. Hannon
Primary Examiner